

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 49

Citations Affected: IC 24-4.8; IC 35-32-2-1; IC 35-41-1-1.

Synopsis: Various computer issues. Conference committee report for ESB 49. Prohibits certain uses of spyware. Authorizes a provider of computer software, a web site owner, or a trademark or copyright holder harmed by a prohibited use of spyware to bring a civil action against the person who committed the prohibited act. Allows a person who brings a cause of action for unlawful spyware installation to receive injunctive relief and the greater of actual damages or \$100,000 per violation. Provides that a person may be convicted of an offense if the person's conduct constitutes an offense under Indiana law and either: (1) involves the use of the Internet or another computer network, and access to the Internet or other computer network occurs in Indiana; or (2) involves the use of electronic communication, including the Internet or another computer network, outside Indiana and the victim of the conduct resides in Indiana at the time of the conduct. Provides that a trial for such conduct may be held in a county: (1) from which or to which access to the Internet or other computer network was made; (2) in which any computer, computer data, computer software, or computer network that was used to access the Internet or other computer network is located; or (3) in which the victim resides at the time of the conduct if the conduct involves the use of electronic communication and occurs outside Indiana. **(This conference committee report removes provisions added in the House of Representatives that would have required state agencies and business entities to disclose any breach of the security of computerized data systems maintained by the agencies and entities to any resident of the state whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person.)**

Effective: July 1, 2005.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 49 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 4 2005]:
- 5 **ARTICLE 4.8. PROHIBITED SPYWARE**
- 6 **Chapter 1. Definitions**
- 7 **Sec. 1. The definitions in this chapter apply throughout this**
- 8 **article.**
- 9 **Sec. 2. "Advertisement" means a communication that has the**
- 10 **primary purpose of promoting a commercial product or service.**
- 11 **Sec. 3. (a) "Computer software" means a sequence of instructions**
- 12 **written in any programming language that is executed on a**
- 13 **computer.**
- 14 **(b) The term does not include computer software that is a web**
- 15 **page or a data component of a web page that is not executable**
- 16 **independently of the web page.**
- 17 **Sec. 4. "Damage" means a significant impairment to the integrity**
- 18 **or availability of data, computer software, a system, or**
- 19 **information.**
- 20 **Sec. 5. "Execute" means to perform a function or carry out an**
- 21 **instruction of computer software.**
- 22 **Sec. 6. "Intentionally deceptive means" means any of the**

following:

(1) A materially false statement that a person knows to be false.

(2) A statement or description made by a person who omits or misrepresents material information with the intent to deceive an owner or operator of a computer.

(3) The failure to provide notice to an owner or operator of a computer regarding the installation or execution of computer software with the intent to deceive the owner or operator.

Sec. 7. "Internet" has the meaning set forth in IC 5-22-2-13.5.

Sec. 8. (a) "Owner or operator" means the person who owns or leases a computer or a person who uses a computer with the authorization of the person who owns or leases the computer.

(b) The term does not include a manufacturer, distributor, wholesaler, retail merchant, or any other person who owns or leases a computer before the first retail sale of the computer.

Sec. 9. "Person" means an individual, a partnership, a corporation, a limited liability company, or another organization.

Sec. 10. "Personally identifying information" means the following information that refers to a person who is an owner or operator of a computer:

(1) Identifying information (as defined in IC 35-43-5-1).

(2) An electronic mail address.

(3) Any of the following information in a form that personally identifies an owner or operator of a computer:

(A) An account balance.

(B) An overdraft history.

(C) A payment history.

Sec. 11. (a) Except as provided in subsection (b), "transmit" means to transfer, send, or otherwise make available computer software or a computer software component through a network, the Internet, a wireless transmission, or any other medium, including a disk or data storage device.

(b) "Transmit" does not include an action by a person who provides:

(1) the Internet connection, telephone connection, or other means of connection for an owner or operator, including a compact disc or DVD on which computer software to establish or maintain a connection is made available;

(2) the storage or hosting of computer software or an Internet web page through which the computer software was made available; or

(3) an information location tool, including a directory, an index, a reference, a pointer, or a hypertext link, through which the owner or operator of the computer located the software;

unless the person receives a direct economic benefit from the execution of the computer software.

Chapter 2. Prohibited Conduct

Sec. 1. This chapter does not apply to a person who monitors or interacts with an owner or operator's Internet connection, Internet service, network connection, or computer if the person is a

telecommunications carrier, cable operator, computer hardware or software provider, or other computer service provider who monitors or interacts with an owner or operator's Internet connection, Internet service, network connection, or computer for one (1) or more of the following purposes:

- (1) Network security.
- (2) Computer security.
- (3) Diagnosis.
- (4) Technical support.
- (5) Maintenance.
- (6) Repair.
- (7) Authorized updates of software or system firmware.
- (8) Authorized remote system management.
- (9) Detection or prevention of the unauthorized, illegal, or fraudulent use of a network, service, or computer software, including scanning for and removing computer software that facilitates a violation of this chapter.

Sec. 2. A person who is not the owner or operator of the computer may not knowingly or intentionally:

- (1) transmit computer software to the computer; and
- (2) by means of the computer software transmitted under subdivision (1), do any of the following:

(A) Use intentionally deceptive means to modify computer settings that control:

- (i) the page that appears when an owner or operator opens an Internet browser or similar computer software used to access and navigate the Internet;
- (ii) the Internet service provider, search engine, or web proxy that an owner or operator uses to access or search the Internet; or
- (iii) the owner or operator's list of bookmarks used to access web pages.

(B) Use intentionally deceptive means to collect personally identifying information:

- (i) through the use of computer software that records a keystroke made by an owner or operator and transfers that information from the computer to another person; or
- (ii) in a manner that correlates the personally identifying information with data respecting all or substantially all of the web sites visited by the owner or operator of the computer, not including a web site operated by the person collecting the personally identifying information.

(C) Extract from the hard drive of an owner or operator's computer:

- (i) a credit card number, debit card number, bank account number, or any password or access code associated with these numbers;
- (ii) a Social Security number, tax identification number, driver's license number, passport number, or any other government issued identification number; or
- (iii) the account balance or overdraft history of a person in

- 1 a form that identifies the person.
- 2 **(D) Use intentionally deceptive means to prevent reasonable**
- 3 **efforts by an owner or operator to block or disable the**
- 4 **installation or execution of computer software.**
- 5 **(E) Knowingly or intentionally misrepresent that computer**
- 6 **software will be uninstalled or disabled by an owner or**
- 7 **operator's action.**
- 8 **(F) Use intentionally deceptive means to remove, disable, or**
- 9 **otherwise make inoperative security, antispyware, or**
- 10 **antivirus computer software installed on the computer.**
- 11 **(G) Take control of another person's computer with the**
- 12 **intent to cause damage to the computer or cause the owner**
- 13 **or operator to incur a financial charge for a service that the**
- 14 **owner or operator has not authorized by:**
- 15 **(i) accessing or using the computer's modem or Internet**
- 16 **service; or**
- 17 **(ii) without the authorization of the owner or operator,**
- 18 **opening multiple, sequential, standalone advertisements in**
- 19 **the owner or operator's Internet browser that a reasonable**
- 20 **computer user cannot close without turning off the**
- 21 **computer or closing the browser.**
- 22 **(H) Modify:**
- 23 **(i) computer settings that protect information about a**
- 24 **person with the intent of obtaining personally identifying**
- 25 **information without the permission of the owner or**
- 26 **operator; or**
- 27 **(ii) security settings with the intent to cause damage to a**
- 28 **computer.**
- 29 **(I) Prevent reasonable efforts by an owner or operator to**
- 30 **block or disable the installation or execution of computer**
- 31 **software by:**
- 32 **(i) presenting an owner or operator with an option to**
- 33 **decline installation of computer software knowing that the**
- 34 **computer software will be installed even if the owner or**
- 35 **operator attempts to decline installation; or**
- 36 **(ii) falsely representing that computer software has been**
- 37 **disabled.**
- 38 **Sec. 3. A person who is not the owner or operator may not**
- 39 **knowingly or intentionally do any of the following:**
- 40 **(1) Induce the owner or operator to install computer software**
- 41 **on the owner or operator's computer by knowingly or**
- 42 **intentionally misrepresenting the extent to which installing the**
- 43 **computer software is necessary for:**
- 44 **(A) computer security;**
- 45 **(B) computer privacy; or**
- 46 **(C) opening, viewing, or playing a particular type of content.**
- 47 **(2) Use intentionally deceptive means to execute or cause the**
- 48 **execution of computer software with the intent to cause the**
- 49 **owner or operator to use the computer software in a manner**
- 50 **that violates subdivision (1).**
- 51 **Chapter 3. Relief and Damages**

1 **Sec. 1. In addition to any other remedy provided by law, a**
 2 **provider of computer software, the owner of a web site, or the**
 3 **owner of a trademark who is adversely affected by reason of the**
 4 **violation may bring a civil action against a person who violates**
 5 **IC 24-4.8-2:**

6 **(1) to enjoin further violations of IC 24-4.8-2; and**

7 **(2) to recover the greater of:**

8 **(A) actual damages; or**

9 **(B) one hundred thousand dollars (\$100,000);**

10 **for each violation of IC 24-4.8-2.**

11 **Sec. 2. For purposes of section 1 of this chapter, conduct that**
 12 **violates more than one (1) subdivision, clause, or item of**
 13 **IC 24-4.8-2 constitutes a separate violation for each separate**
 14 **subdivision, clause, or item violated. However, a single action or**
 15 **course of conduct that causes repeated violations of a single**
 16 **subdivision, clause, or item of IC 24-4.8-2 constitutes one (1)**
 17 **violation.**

18 SECTION 2. IC 35-32-2-1 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Criminal actions
 20 shall be tried in the county where the offense was committed, except as
 21 otherwise provided by law.

22 (b) If a person committing an offense upon the person of another is
 23 located in one (1) county and ~~his~~ **the person's** victim is located in
 24 another county at the time of the commission of the offense, the trial
 25 may be in either of the counties.

26 (c) If the offense involves killing or causing the death of another
 27 human being, the trial may be in the county in which the:

28 (1) cause of death is inflicted;

29 (2) death occurs; or

30 (3) victim's body is found.

31 (d) If an offense is committed in Indiana and it cannot readily be
 32 determined in which county the offense was committed, trial may be in
 33 any county in which an act was committed in furtherance of the
 34 offense.

35 (e) If an offense is commenced outside Indiana and completed within
 36 Indiana, the offender may be tried in any county where any act in
 37 furtherance of the offense occurred.

38 (f) If an offense commenced inside Indiana is completed outside
 39 Indiana, the offender shall be tried in any county where an act in
 40 furtherance of the offense occurred.

41 (g) If an offense is committed on the portions of the Ohio or Wabash
 42 Rivers where they form a part of the boundaries of this state, trial may
 43 be ~~had~~ in the county that is adjacent to the river and whose boundaries,
 44 if projected across the river, would include the place where the offense
 45 was committed.

46 (h) If an offense is committed at a place which is on or near a
 47 common boundary which is shared by two (2) or more counties and it
 48 cannot be readily determined where the offense was committed, then
 49 the trial may be ~~had~~ in any county sharing the common boundary.

50 (i) If an offense is committed on a public highway (as defined in
 51 IC 9-25-2-4) that runs on and along a common boundary shared by two

(2) or more counties, the trial may be held in any county sharing the common boundary.

(j) If an offense is committed by use of the Internet or another computer network (as defined in IC 35-43-2-3), the trial may be held in any county:

(1) from which or to which access to the Internet or other computer network was made; or

(2) in which any computer, computer data, computer software, or computer network that was used to access the Internet or other computer network is located.

(k) If an offense:

(1) is committed by use of:

(A) the Internet or another computer network (as defined in IC 35-43-2-3); or

(B) another form of electronic communication; and

(2) occurs outside Indiana and the victim of the offense resides in Indiana at the time of the offense;

the trial may be held in the county where the victim resides at the time of the offense.

SECTION 3. IC 35-41-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) As used in this section, "Indiana" includes:

(1) the area within the boundaries of the state of Indiana, as set forth in Article 14, Section 1 of the Constitution of the State of Indiana;

(2) the portion of the Ohio River on which Indiana possesses concurrent jurisdiction with the state of Kentucky under Article 14, Section 2 of the Constitution of the State of Indiana; and

(3) the portion of the Wabash River on which Indiana possesses concurrent jurisdiction with the state of Illinois under Article 14, Section 2 of the Constitution of the State of Indiana.

(b) A person may be convicted under Indiana law of an offense if:

(1) either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana;

(2) conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana;

(3) conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the conspiracy occurs in Indiana;

(4) conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law; ~~or~~

(5) the offense consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana;

(6) conduct that is an element of the offense or the result of conduct that is an element of the offense, or both, involve the use of the Internet or another computer network (as defined in IC 35-43-2-3) and access to the Internet or other computer network occurs in Indiana; or

(7) conduct:

- 1 **(A) involves the use of:**
2 **(i) the Internet or another computer network (as defined in**
3 **IC 35-43-2-3); or**
4 **(ii) another form of electronic communication;**
5 **(B) occurs outside Indiana and the victim of the offense**
6 **resides in Indiana at the time of the offense; and**
7 **(C) is sufficient under Indiana law to constitute an offense in**
8 **Indiana.**
9 (c) When the offense is homicide, either the death of the victim or
10 bodily impact causing death constitutes a result under subsection (b)(1).
11 If the body of a homicide victim is found in Indiana, it is presumed that
12 the result occurred in Indiana.
 (Reference is to ESB 49 as printed March 25, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 49

Signed by:

Senator Ford
Chairperson

Representative Koch

Senator Broden

Representative Moses

Senate Conferees

House Conferees